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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/542,898	02/21/2006	Pieter De Jong	0702-052257	8368
28289 7590 03/04/2009 THE WEBB LAW FIRM, P.C. 700 KOPPERS BUILDING 436 SEVENTH AVENUE PITTSBURGH, PA 15219				
EXAMINER				
TRIEU, THERESA				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/542,898

Applicant(s)

DE JONG, PIETER

Examiner

Theresa Trieu

Art Unit

3748

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 36-39 is/are allowed.
- 6) ☒ Claim(s) 20-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This Office Action is responsive to the applicant's amendment filed on Nov. 11, 2008.

Claims 1-19 have been canceled. Claims 36-39 have been added. Thus, claims 20-39 are pending in this application.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

1. Claim 20 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 12 of U.S. Patent No. 7,037,093 in view of Schnell (Patent Number 4,747,767).

The patent claims the invention as claimed with the exception of the outer housing being divided into outer housing segments. Schnell teaches that it is conventional in the pump art to utilize an outer housing 6 being divided into outer housing segments 10. It would have been

obvious to one having ordinary skill in the art at the time the invention was made, to have utilized the outer housing being divided into outer housing segments, as taught by Shnell, since the use thereof would have varied the quantity of the pumps within wide limits or being used for a particular purpose, or solved a stated problem.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 20-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cole (Patent Number 5,688,540) in view of Schnell.

Regarding claims 20, 27 and 35 as shown in Figs. 1-3, Cole discloses a dividing device, comprising: a) an outer housing with an inlet 18, 21 and at least two outlets 22-25; b) at least two pump chambers placed adjacently of each other in the outer housing, each with a pump chamber 32-35 infeed connected to the inlet and each with a pump chamber discharge connected to the outlet 22-25; and c) at least two vane-type rotors, one in each pump chamber 42 and with a rotation axis in line, each vane-type rotor comprising a hub 44 provided with continuous vanes 48, 49 which are slidable through the hub along their longitudinal axis and almost perpendicularly of the axis of the hub; vane type rotors form a vane type rotor assembly. However, Cole fails to disclose the outer housing being divided into outer housing segments. Shnell teaches that it is conventional in the pump art to utilize an outer housing 6 being divided into outer housing segments 10. It would have been obvious to one having ordinary skill in the

art at the time the invention was made, to have utilized the outer housing being divided into outer housing segments, as taught by Schnell, since the use thereof would have varied the quantity of the pumps within wide limits or being used for a particular purpose, or solved a stated problem. Applicant also notes that it would have been obvious to one having ordinary skill in the art at the time the invention was made, to utilize the outer housing being divided into outer housing segments, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlicman*, 168 USPQ 177, 179.

Regarding claims 21-26 and 28-34, Schnell discloses each outer housing segment 10 comprising at least one inlet/outlet openings (not numbered; however, clearly seen in Fig. 5); each outer housing segment 10 comprising one pump chamber (see Fig. 5); the outer housing segments 10 being identical; each outer housing segment comprising an inlet and an outlet; the outer housing segments being enclosed between closed end parts (not numbered; however, clearly seen in Fig. 3); the outer housing segments being in parallel arrangement; each outer housing segment being provided with a cylinder running through the outer housing segment and having a longitudinal axis practically parallel to the rotation axis of the rotor pump assembly, wherein the pump chambers are held in the cylinder; the cylinder being a circular cylinder (see Fig. 3); the cylinder running continuously through the segments; the outer housing segments are mirror-symmetrical relative to a plane of symmetry perpendicularly of the longitudinal axis of the cylinder; each outer housing segment 10 comprising one pump chamber (see Fig. 5) wherein each pump chamber extends into a subsequent segment; the outer housing segments being cylindrical with end surfaces, and forming together with the end surfaces on each other a cylindrical outer housing, and the pump chambers are each cylindrical with end surfaces, and

connecting together form a cylinder in the outer housing, wherein the end surfaces of the pump chambers are offset relative to the end surfaces of the outer housing segments 10; the pump chambers being closed on one end surface and open on the other side, wherein the pump chambers are arranged with the closed end surface toward the open end surface of a subsequent pump chamber.

Allowable Subject Matter

3. Claims 36-39 are allowed.

Response to Arguments

4. Applicant's arguments filed on Nov. 11, 2008 have been fully considered but they are not persuasive.

- With regard to applicant's argument that Schnell '767 does not teach/suggest an outer housing being divided into outer housing segments (see remarks section, pages 7-9). The examiner respectfully disagrees because the Schnell '767 discloses the outer housing 6 being divided into outer housing segments 10 [emphasis added]. Thus, in a broad reasonable interpretation of the claim language, Schnell '767 indeed discloses or teaches the claimed limitation in dispute. Claims in a pending application are given their broadest reasonable interpretation. See *In re Pearson*, 181 USPQ 641 (CCPA 1974).

- With regard to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071,

5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). The examiner recognizes that references cannot be arbitrarily combined and that there must be some reasons why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. *In re Nomiya*, 184 USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. *In re McLaughlin*, 170 USPQ 209 (CCPA 1971). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. *In re Bozek*, 163 USPQ 545 (CCPA 1969). In this case, Edwards teaches the multi-outlet depositor receiving a fluid material and displaces first and second portions of the material using first and second mechanism. Schnell is applied herein merely for the teaching that it is conventional to utilize an outer housing 6 being divided into outer housing segments 10. The examiner maintains that one of ordinary skill would have found it obvious to utilize the outer housing divided into the outer housing segments taught by Schnell to vary the quantity of the pumps within wide limits. The claims do not patentably define over the combination of references as set forth in the above rejections.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F.R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP §2163.06 II(A), MPEP §2163.06 and MPEP §714.02. The "disclosure" includes the claims, the specification and the drawings.

Communication

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Theresa Trieu whose telephone number is 571-272-4868. The examiner can normally be reached on Monday-Friday 8:30am- 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas E. Denion can be reached on 571-272-4859. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TT

/Theresa Trieu/
Primary Examiner, Art Unit 3748